CORPORATIONS—EFFECT OF SURRENDER OF CHARTER.—A voluntary unincorporated fraternal organization incorporated under the laws of New Jersey. Later the charter was voluntarily surrendered under the laws of that state and a new charter obtained in Pennsylvania. The Supreme Court of Pennsylvania *held* that the former status of the organization was revived by the surrender of the charter. *Schriner, et al.* v. *Sachs, et al* (Pa. 1916), 98 Atl. 724.

The same facts were presented before the Court of Chancery of New Jersey, which *held* that the former status was not revived by the surrender of the charter. *Doan* v. *Jones, et al.* (N. J. 1916), 99 Atl. 192.

The line of argument in the Pennsylvania case is that the act of incorporation merely gave a new form to the organization already existent, citing *Commonwealth ex rel* v. *Heilman,* 241 Pa. 374 (1913), and concluding from that premise that the sloughing of the corporate form did not destroy the organization itself, but returned it to its former status. The New Jersey case points out that the corporation went through the statutory forms of *dissolution* and concludes that both under the terms of the statute and "the adequate conception of the effect of incorporation and the force of dissolution" there was a total determination of the organization except for the payment of debts. The court cites no authority and expressly disapproves of the Pennsylvania case, which was cited by counsel. The point involved seems a new one. We submit that the New Jersey court begs the question insofar as its decision is based upon the nature and effect of *dissolution.* There is no issue as to the *corporation* being determined by dissolution, but the point raised is *what is it that is determined?* In other words the Pennsylvania court proceeds upon the hypothesis that incorporation effects a mere change in *form* which process may be reversed, while the New Jersey court assumes that incorporation results in a progressive evolution of the very entity of the organization, which cannot be later made to work retrogressively. None of the stock theories as to corporations precisely meets the situation and it seems that an interesting field of speculation is opened up.

CORPORATIONS—PERSONAL LIABILITY OF STOCKHOLDERS OF UNREGISTERED FOREIGN CORPORATION.—The defendants are stockholders in a foreign corporation which had carried on business in the state without having attempted to comply with the statutory registration requirements as to such corporations. The plaintiffs, who had been employed by the corporation, are seeking to hold the stockholders liable as partners for the amounts due them. *Held,* the defendants are liable as partners. *Cunnyngham* v. *Shelby* (Tenn. 1916), 188 S. W. 1147.

It is almost universally held that, where a foreign corporation fails to comply with the statutory requirements of the state, its contracts are not void but voidable, and may be enforced against the corporation. The corporation may not set up its non-compliance as a defense. *Ins. Co.* v. *Rust,* 141 Ill. 85, 30 N. E. 772; *Ins. Co.* v. *McMillan,* 24 Oh. St. 67; *Ins. Co.* v. *Simons,* 96 Pa. St. 520. The instant case presents the question whether, having dealt with the corporation as a valid corporation, the plaintiffs may

set up the non-compliance and deny the validity of the corporate existence, and thereby hold the stockholders liable as partners. The court reasons that the foreign corporation, having made no attempt to comply with the statutes, has no legal sanction to operate within the state and hence has no legal existence within the state at all, and having none has no standing before the courts as a corporation for the enforcement of any right, as the existence of the corporation cannot be recognized. Such being the case the stockholders, having associated themselves together and carried on a business for profit, are partners and cannot rely upon their corporate existence in another state as a cloak to relieve them of their liability as such. The court relies upon *Taylor* v. *Branham,* 35 Fla. 297, 17 So. 552, 39 L. R. A. 362; *Mandeville* v. *Courtwright,* 142 Fed. 97, 73 C. C. A. 321, 6 L. R. A. N. S. 1003; *Morton* v. *Hart,* 88 Tenn. 427, 12 S. W. 1026; *Carter* v. *McClure,* 98 Tenn. 109, 38 S. W. 585, 36 L. R. A. 282. The weight of authority, however, seems to support the view that the bare fact that a foreign corporation has not complied with the state registration statutes is not sufficient to authorize a judgment against the stockholders as partners on contracts executed in the name of the corporation. *Nat'l Bank* v. *Spot Cash Coal Co.,* 98 Ark. 59; *Boyington* v. *Van Etten,* 62 Ark. 63, 35 S. W. 622; *Tribble* v. *Halbert,* 143 Mo. App. 524; *Merrick* v. *Van Santvoord,* 34 N. Y. 208; *Stephenson* v. *Dodson,* 36 Pa. Super. Ct. 343; *Bond* v. *Stroughton,* 26 Pa. Super. Ct. 483; *Leschen Rope Co.* v. *Moser* (Tex. Civ. App.), 159 S. W. 1018. It is well settled that such liability may be imposed upon the stockholders by statute, *Kendall* v. *Bank,* 19 Colo. 310, 35 Pac. 538; *Hunnewell* v. *Duxbury,* 154 Mass. 286, 28 N. E. 267; *Chesley* v. *Soo &c. Co.,* 19 N. D. 18; *Goldsberry* v. *Carter,* 100 Va. 438, 41 S. E. 858, and it seems clear that where the corporate existence is effected in another state purely for the purpose of defeating personal liability, such is a fraud upon the state which prevents a valid incorporation and therefore the stockholders may be held liable as partners. *Cleaton* v. *Emery,* 49 Mo. App. 345; *Davidson* v. *Hobson,* 59 Mo. App. 130; *Hill* v. *Beach,* 12 N. J. Eq. 31; *Montgomery* v. *Forbes,* 148 Mass. 249, 19 N. E. 342. It has also been held that an agent who has actually entered into contracts for such a corporation may be held personally liable on the ground that the corporation, having no power to transact business within the state, can delegate none to the agent, and one who undertakes to act for such a principal and represents himself to have such power when in fact he has none, is personally responsible. *Morton* v. *Haff,* 88 Tenn. 427, 12 S. W. 1026; *Raff* v. *Isham,* 235 Pa. St. 347, 84 Atl. 352; *Lasher* v. *Stinson,* 145 Pa. St. 30, 23 Atl. 552. In the absence of such a statute and of fraud in the incorporation of the company, and where the stockholder has not personally actively engaged in the actual business, it is not so clear that the partnership liability should be imposed upon him. It seems clear that the other party to the contract never intended to look to him in case of any damage or loss resulting. When he entered into the contract it was the corporation as such that he had in mind. He has his remedy against the corporation on the contract either in his own state as shown above or—contract actions being transitory—in the courts of the parent state of the

corporation. Non-compliance of the corporation in no way affects the validity of the existence of the corporation, *Rough* v. *Breitung,* 117 Mich. 48, 75 N. W. 147, and a corporate franchise granted by one state may not be revoked or annulled by the courts of another, *Merrick* v. *Van Santvoord,* supra. Hence it would appear that where a party has recognized the validity of the corporation by dealing with it as such knowingly he should be estopped from setting up its non-compliance with the registration requirements as a means to fasten a personal liability upon the stockholders of the company, unless there is a statute which strips the company of its corporate character. *Mandeville* v. *Courtwright,* supra. The above case was relied upon by the court in the principal case in coming to an opposite conclusion, but it should be noticed that it was expressly found that the plaintiff had no knowledge that she was dealing with a corporation, and that the court makes no comment in reviewing the instruction of the trial court that if the plaintiff dealt with the corporation with knowledge she would be estopped to deny its power to act, and would be precluded from holding the shareholders liable as partners. *Taylor* v. *Branham,* supra, the only other case concerning the liability of stockholders cited by the court in the principal case, is an unsatisfactory report and it is not clear on what circumstance the court rests its decision.

COUNTERCLAIM—WHEN BARRED IN EQUITY BY THE STATUTE OF LIMITATIONS.—Complainant was a stockholder in defendant corporation, and brought a bill in equity to compel payment of his dividends and a transfer of his stock to his vendee upon the defendant's books. The defendant in its cross-bill insisted that the plaintiff pay to the defendant a certain counterclaim, which, however, was barred by the Statute of Limitations. The lower court refused to give effect to the counterclair and allowed the complainant the relief sought. *Held,* this decree should be reversed and case remanded for new trial in which the counterclaim should be allowed. *United Cigarette Mach. Co.* v. *Brown* (Va. 1916), 89 S. E. 851.

In the principal case the defendant company had a lien on all its stock for the debts of the stockholders by virtue of a clause in the articles of incorporation. The fact that the Statute of Limitations has barred an action by the corporation on its claim will not destroy the lien upon the stock. *Brent* v. *Bank of Washington,* 10 Pet. 596, 9 L. Ed. 547; *Sproul* v. *Standard Plate Glass Co.,* 201 Pa. 103, 50 Atl. 1003; COOK, CORPORATIONS (7th Ed.), §527. The decision in the principal case might have been put on this ground alone. However, the court assigns as an additional reason for giving effect to the counterclaim, the principle of equity, sometimes expressed in the maxim, "He who seeks equity must do equity." If relief is granted on this theory, the existence of the defendant's lien is immaterial. In case the plaintiff brings an action at law, a counterclaim or set-off barred by the Statute of Limitations is inadmissible. *Taylor* v. *Gould,* 57 Pa. St. 152, WATERMAN, SET-OFF (2nd Ed.), §99. The rule is different in equity; if there is an equitable right to which the defendant is entitled, the court will make it a condition precedent to the granting of the relief sought by the